

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SLEEPY'S, LLC, :
: Plaintiff, :
: : 07 CV 4018 (TCP) (ARL)
- against - :
: :
SELECT COMFORT WHOLESALE CORPORATION, :
SELECT COMFORT RETAIL CORPORATION and :
SELECT COMFORT CORPORATION, :
: Defendants.
-----x

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION
FOR AN ORDER ADOPTING THE SPECIAL MASTER'S MEMORANDUM & ORDER
DENYING DEFENDANTS' MOTION TO EXCLUDE EVIDENCE OF SECRET SHOPS
BECAUSE IT IS NOT RELEVANT TO PLAINTIFF'S
SLANDER *PER SE* & LANHAM ACT CLAIMS**

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March 12, 2012

STATEMENT IN SUPPORT OF PLAINTIFF'S MOTION

On October 13, 2011, Defendants (collectively, "Select Comfort") moved *in limine* for an order excluding evidence of secret shops because it is not relevant to Plaintiff Sleepy's, LLC's ("Sleepy's") slander *per se* and Lanham Act claims (the "Motion"). The Motion was fully briefed, and filed with the Court on November 30, 2011.

By Order dated January 10, 2012 the Court appointed Hon. Stephen G. Crane as Special Master in this litigation, pursuant to Fed. R. Civ. P. 53, to, *inter alia*, rule on the Motion.

On March 2, 2012, Special Master Crane issued a Memorandum & Order denying Select Comfort's Motion (the "March 2, 2012 Memorandum & Order").

Sleepy's respectfully requests that this Court enter an Order adopting the March 2, 2012 Memorandum & Order. Sleepy's notes that in the Memorandum & Order, the Special Master granted Select Comfort's Motion only "As to the secret shop evidence from the independent contractor outside the plaintiff's geographical spheres of interest." (March 2, 2012 Memorandum & Order, at 5.) After a ruling by a Special Master, a party may move to adopt the Master's order. Fed. R. Civ. P. 53(f)(2); Moore's Federal Practice § 53.41.

CONCLUSION

For the foregoing reasons, this Court should enter an Order adopting the March 2, 2012 Memorandum & Order of the Special Master.

Dated: New York, New York
March 12, 2012

Respectfully submitted,

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